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October 31, 2003

VIA ELECTRONIC FILING

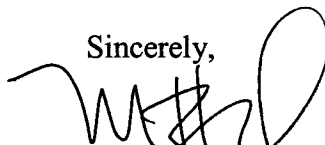
Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

**Re: Notice of *Ex Parte* Presentation by Xspedius Management
Company LLC in WC Docket Nos. 96-98, 99-68, 01-92 and 03-171**

Dear Ms. Dortch:

Yesterday, Jim Falvey, Renee Terry and I, on behalf of Xspedius Management Company, LLC, met with Tamara Preiss, Jay Atkinson, Chris Barnekov, David Hu, Steve Morris, and Victoria Schlesinger of the Wireline Competition Bureau to discuss the above-referenced proceedings and to distribute and discuss the attached presentation. As required by Section 1.1206(b), this *ex parte* notification is being filed electronically for inclusion in the public record of the above-referenced proceedings. Please direct any questions regarding this matter to the undersigned.

Sincerely,



Michael B. Hazzard
Counsel to Xspedius Management
Company, LLC

Attachment

cc: Tamara Preiss, Jay Atkinson, Chris Barnekov, David Hu, Steve Morris, and Victoria Schlesinger

Xspedius Communications Reciprocal Compensation and Local Transport Issues

Jim Falvey, Sr. V.P., Regulatory Affairs
Renee Terry, Director, Regulatory Affairs
Michael Hazzard, Kelley Drye & Warren

October 30, 2003

Regulatory Background

- ISP Remand Order intended to reduce rates but create regular payment streams between ILECs and CLECs
- Commission rules clearly require facilities payments when CLEC facilities carrying another carrier's traffic
- Primary policy goal of Xspedius to normalize reciprocal compensation payments, both facilities and usage
- Interconnection services cannot be withheld when reciprocal compensation or local transport is not paid
- ILECs have taken the best of the Order, but not become regular payers of reciprocal compensation

All RBOCs Engaged in Gamesmanship

Verizon

- Refused to recognize 1Q 2001 quota for recip comp mous
- Complaint on file

BellSouth

- Overbilling for local transport
- Refusing to pay intraLATA toll bills
- Refusing to pay undisputed local bills: total dispute approaching \$3M

All RBOCs Engaged in Gamesmanship (cont.)

SWBT:

- Has never paid local transport charges and is past due over \$3M
- Raising interstate VOIP issue as obstacle to recip comp negotiations
- Not willing to pay correct “local” rate under the 3:1 ratio

Qwest:

- Attempting to force Xspedius to bill and keep in Colorado, contrary to FCC Order

No Improvement On RBOC Payment History

- In just one year, the RBOCs are \$9.2M past due on reciprocal compensation usage and over \$4.8M past due on local transport facilities payments for a total of over \$14M past due
- Xspedius has worked disputes vigorously and should not be required to file complaints against every carrier in every instance
- RBOCs have benefited in the past from litigation and will continue to litigate this issue if they can delay payments through litigation (MOKAT states)

Verizon: Complaint on File

- Unlike every other RBOC, Verizon has refused to recognize that Xspedius owns the 1Q01 minutes of use quota under the ISP Remand Order
- Verizon agreed to the assumption and assignment of the e.spire interconnection agreements by Xspedius
- Verizon insisting on bill and keep for ISP going forward, truncating the transition period ordered by the Commission

SWBT Delay and Refusal to Pay Local Transport Bills

- Unlike other RBOCs, SWBT has never made regular local transport payments
- Exhaustive LTB discussions in the MOKAT states have now led to an outright refusal to make any payments in any state
- SWBT also has placed equipment in Xspedius space and refuses to make collocation payments
- Xspedius opted into AT&T agreements in MOKAT states: has SWBT paid AT&T?
- 5th Circuit has clarified SWBT's obligation

SWBT Refusal to Pay Reciprocal Compensation

- SWBT has not made a reciprocal compensation payment since February and routinely withholds undisputed reciprocal compensation payments
- In SWBT MOKA negotiations, reciprocal compensation negotiations since October 2002 have hamstrung close to \$1M in payments to Xspedius
- SWBT has insisted on rates below the 3:1 ratio that are ***not*** PSC approved
- Call set-up and duration rates below the 3:1 ratio and FCC ISP rate above the 3:1 ratio results in double-dipping, arbitraging on the benefit of both the state and federal solutions

SWBT Usurping FCC Jurisdiction on Voice Over IP (“VOIP”)

- In Texas and MOKA negotiations, SWBT has interposed the VOIP issue late in the process, despite no change of law
- The VOIP language goes far beyond the Stevens Report and SWBT will not agree to incorporate the Stevens Report by reference or “agree to disagree” as in the past
- Xspedius has proposed at least limiting to intrastate VOIP traffic, and SWBT has refused insisting on resolving interstate VOIP issues before the state commissions
- Xspedius proposed incorporating specific aspects of the Stevens Report (e.g., phone-to-phone may be subject to access) and SWBT has refused, taking its usual “my way or the highway” approach to negotiations
- Xspedius has compromised on myriad other issues but SWBT has created VOIP and 251(b)(5) rate obstacles to completing the negotiation, knowing that it holds close to \$1M in recip comp payments hostage and benefits from arbitration and further delay
- Xspedius’ only option would be four state commission arbitrations (to address three markets)

BellSouth: Overbilling on Local Transport

- Parties' interconnection agreement clearly requires UNE rates for local interconnection transport
- BellSouth first raised issue that UNE rates should apply to local transport under interconnection agreement
- Xspedius agreed, subject to resolving issue both ways
- Xspedius audit showed overbilling of approximately \$2M
- BellSouth's defense to this overbilling – that Xspedius has failed to file a PLF – is not supported by the interconnection agreement

BellSouth: Nonpayment of Undisputed Local and Toll

- Xspedius negotiating with BellSouth on local and toll billing disputes since May with no progress
- BellSouth conceded that \$109K was due in Florida months ago but has refused to pay this undisputed amount
- BellSouth has refused payment on Xspedius intraLATA toll bills
- BellSouth forcing Xspedius to litigate these issues, as are other RBOCs

Qwest Frivolous ISP Dispute in Colorado

- Qwest has agreed that the 1Q01 ISP Remand quota transferred from e.spire to Xspedius
- Qwest has tried to argue that bill and keep applies to ISP traffic in Colorado because 'the Colorado Commission ordered it'
- The Colorado Commission had not ordered bill and keep as to e.spire, whose agreement Xspedius took over, prior to the effective date of the ISP Remand Order (footnote 152)
- Any Colorado Commission order after the effective date of the Order is not relevant because the Colorado Commission lacked jurisdiction from that point forward
- The Colorado Commission has now mischaracterized the parties' recently filed ISP Remand amendment as a bill and keep agreement for ISP traffic (Qwest refuses to correct the record)
- Again, the RBOC is withholding significant dollars based upon frivolous disputes

FCC Solutions

- Forbearance from enforcement of the ISP Remand Order, or certain aspects, such as new market restriction and the cap on minutes of use
- Clarify in any Further Notice that VOIP is a federal issue